

IN THE IOWA DISTRICT COURT FOR TAYLOR COUNTY

STATE OF IOWA, ex rel., IOWA DEPARTMENT OF NATURAL RESOURCES, Plaintiff, vs. STEVEN KERNS, Defendant.	NO. _____ PETITION IN EQUITY
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COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (IDNR) and for its claims against Defendant Steven Kerns (“Kerns”), states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and the issuance of a permanent injunction against Defendant Steven Kerns for the following: violating IDNR administrative consent orders; failing to properly contain manure produced at animal feeding operations; failing to report releases of manure; violating Iowa regulations governing the composting of deceased animals; and discharging manure or wastewater into a water of the State in violation of Iowa’s water quality laws.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America.
3. IDNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Defendant Steven Kerns resides at 3354 140th St, Clearfield, Taylor County, Iowa.
5. Kerns owns and operates a confinement feeding operation located at 1475

Sherwood Avenue, Lenox, Taylor County, Iowa (hereafter “West Facility”).

6. Kerns owns and operates a joint confinement feeding operation and open feedlot operation located at 1372 Highway 25, Clearfield, Ringgold County, Iowa (hereafter “East Facility”).

DEFINITIONS

7. “Animal feeding operation” means “a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation.” Iowa Code § 459.102(4).

8. “Confinement feeding operation” means “an animal feeding operation in which animals are confined to areas which are totally roofed.” Iowa Code § 459.102(14).

9. “Formed manure storage structure” means “a covered or uncovered impoundment used to store manure from an animal feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.” Iowa Code § 459.102(30).

10. “Point source” means “any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged.” Iowa Code § 455B.171(21).

11. “Pollutant” means “sewage, industrial waste, or other waste.” Iowa Code § 455B.171(22).

12. “Release” means an “actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting or land-applying manure.” 567 Iowa Admin. Code 65.1(1).

13. “Unformed manure storage structure” means a “covered or uncovered impoundment used to store manure, other than a formed manure storage structure, which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.” Iowa Code § 459.102(58).

14. “Water of the State” means “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Iowa Code § 455B.171(41).

15. “Water pollution” means “the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the State by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.” Iowa Code § 455B.171(42).

JURISDICTION

Water Quality

16. IDNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1).

17. IDNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

18. The Iowa Environmental Protection Commission (EPC) has authority to establish water quality standards, pretreatment standards, and effluent standards; and adopt rules relating to the location, construction, operation, maintenance, or modification of disposal systems, or for the

discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455A.6(6)(a) and 455B.173(2), (3) and (6). The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 60–69.

19. The dumping, depositing, or discharging of pollutants into any water of the State is prohibited, except adequately treated sewage, industrial waste, or other waste in accordance with rules adopted by the EPC. Iowa Code § 455B.186(1).

20. The discharge of any pollutant from a point source into a navigable water is prohibited unless authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. 567 Iowa Admin. Code 62.1(1).

21. All Iowa surface waters are to be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. 567 Iowa Admin. Code 61.3(2)(c).

22. All Iowa surface waters are to be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life. 567 Iowa Admin. Code 61.3(2)(d).

23. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

24. The Attorney General is authorized, at the request of the IDNR director with approval of the EPC, to initiate any legal proceedings, including an action for injunction or temporary injunction, necessary to enforce the penalty provisions of said statutes and any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

Animal Feeding Operations

25. The EPC has the authority to establish rules relating to the construction, expansion, or operation of animal feeding operations, including related animal feeding operation structures. Iowa Code § 459.103(1). These rules shall include, but are not limited to, minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing. Iowa Code § 459.103(1). These rules are contained in 567 Iowa Admin. Code 65.

26. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

27. A confinement feeding operation shall not discharge manure directly into a water of the state or into a tile line that discharges into a water of the state. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

28. All manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface water or groundwater pollution. Iowa Code § 459.311(3) and 567 Iowa Admin. Code 65.2(7).

29. Any person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the DNR of the occurrence of the release as soon as possible but not later than six hours after the onset or discovery of the release. 567 Iowa Admin. Code 65.2(9)(a).

30. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the same manner as provided in chapter 455B, division I. Iowa Code § 459.601(2)(a). The DNR and the Attorney General may enforce the provisions of subchapter III of chapter 459 in the same manner as provided in section 455B.175. Iowa Code § 459.601(2)(b).

31. A person who violates subchapter III of chapter 459 shall be subject to a civil

penalty which shall be established, assessed and collected in the same manner as provided in section 455B.109 or 455B.191. Iowa Code § 459.603.

Composting

32. IDNR has jurisdiction over the management, dumping, depositing, and disposal of solid waste by establishing standards for sanitary disposal projects and by regulating solid waste through a system of general rules and specific permits. 567 Iowa Admin. Code 100.1.

33. Dead farm animals in a compost pile are to have an adequate base layer (from 12 to 24 inches thick, depending on the size and number of dead farm animals) with 6 to 12 inches of bulking agent between carcasses and an additional 12 inches of cover material shall be maintained around carcasses at all times. 567 Iowa Admin. Code 105.6(6).

34. The Attorney General, on request of IDNR, shall institute any legal proceedings necessary for violations of composting laws and rules issued pursuant to Iowa Code Chapter 455D. Iowa Code § 455D.25(1).

FACTS

West Facility

35. The West Facility has three animal confinement structures, with two of the structures being operational dating back to at least 2015.

36. The two operational confinement structures of the West Facility use shallow under-building pits to temporarily store manure, and the manure is then periodically drained to a separate exterior and formed manure storage structure until that manure is land applied.

37. Approximately 400 feet to the south and downhill from the West Facility is an unnamed tributary of the east fork of the One Hundred and Two River (Hereafter “tributary”).

38. The tributary flows into a navigable water and a water of the state.

39. At all times relevant to these alleged violations, Kerns has not had a NPDES permit for any of the structures at the West Facility.

40. In April 2017, Kerns and IDNR entered into Administrative Consent Order 2017-AFO-14, which required Kerns to operate and maintain all animal feeding operation structures in compliance with applicable law; to construct at the West Facility both secondary containment around the formed manure storage structure and an unformed manure storage structure to provide additional storage by October 1, 2017, or face a late penalty of \$4,000.00; and submit monthly updates to IDNR on available freeboard.

41. In April 2017, Kerns and IDNR also agreed to Administrative Consent Order 2017-AFO-15, which required Kerns to comply with the obligations of Administrative Consent Order 2017-AFO-14 and to submit a manure management plan.

42. Between April 2017 and May 2017, Kerns installed the secondary containment.

43. As of the date of this petition, the construction of an unformed manure storage structure has not been built, nor has Kerns paid the \$4,000.00 late construction penalty.

44. On May 10, 2017, IDNR Field Office 4 environmental specialist Alison Manz conducted a follow-up visit to the West Facility to ensure compliance with the prior administrative orders and saw storm water retained by the secondary containment.

45. On May 23, 2017, Ms. Manz wrote a letter to Kerns detailing her observations and reminding Kerns of the October 1, 2017 deadline for the installation of an unformed manure storage structure.

46. Ms. Manz also reminded Kerns in the May 2017 letter that the secondary containment was not a permanent manure storage structure and would require liquids to be pumped out as they were retained.

47. On January 31, 2018, manure was outside of the formed manure storage structure, and the secondary containment had captured and ponded the manure.

48. The manure on the ground was due to a pipe leading to the containment structure breaking.

49. Kerns was aware of the release and did not report the release to the DNR within six hours of discovering the release.

50. On February 26, 2018, The IDNR issued Kerns a Notice of Violation (NOV) for failing to retain all manure in a manure storage structure.

51. On April 10, 2018, Kerns submitted a Manure Management Plan (MMP) for the West Facility to IDNR Field Office 4 and it was approved.

52. On or around May 7, 2019, old manure was on the ground to the east of the under-building manure storage structure of the middle confinement, and the manure had flowed downhill to a tributary.

53. The manure spill took place sometime during the winter of 2018.

54. Kerns did not report the release to IDNR within six hours of discovering the release.

55. On or around May 7, 2019, manure had overflowed from the formed manure storage structure, and the secondary containment captured and ponded the manure.

56. Kerns did not report this release to the DNR within six hours of discovering the release.

57. On or around May 7, 2019, fresh manure was located to the south of the western confinement.

58. The fresh manure had backed up and overflowed from the under-building manure storage structure.

59. Kerns stated the release happened May 6, 2019, but he did not report the release prior to the date of the investigation.

60. On or around May 7, 2019, the fresh manure was discharging into the south tributary making a noticeable manure plume.

61. The water in the tributary was tested downstream of the discharge and the results showed increased concentration levels of chemical and biological criteria consistent with manure discharge.

62. The ground to the north of the tributary, between the formed manure structure and the tributary, contained ponded manure and manure branching into multiple pathways.

63. On May 28, 2019, the IDNR issued Mr. Kerns a NOV for the violations observed on May 7, 2019.

East Facility

64. The East Facility has a joint confinement feeding operation and open feedlot operation.

65. The confinement feeding operation (hereafter “Confinement”) is a grow-to-finish operation that consists of two hoop barn confinement structures that has a maximum 160 animal unit capacity.

66. The Confinement is a dry bedded operation.

67. The dry manure and dry bedded manure from the Confinement is stockpiled to the north of the East Confinement.

68. The open feedlot operation (hereafter “Feedlot”) contains breeding sows and has a maximum animal unit capacity of 100 animal units.

69. The East Facility contains a compost pile used for composting dead animals from

both the East and West Facilities.

70. On September 19, 2016, dead animals in various states of decay at the composting site were not fully covered and did not have any material between carcasses.

71. On October 12, 2016, IDNR issued Kerns a Letter of Noncompliance informing Kerns of the need for proper cover and spacing of dead animals.

72. On or around July 27, 2017, liquid manure was releasing from the southeast corner of the Confinement structure and flowing uncontrolled over the land through some brush.

73. Mr. Kerns did not report this release to IDNR within six hours of discovering the release.

74. Dry bed manure was stockpiled to the north of the Confinement with no controls in place to contain the manure runoff.

75. Traces of prior runoff showed a flow downhill to the northeast to a grassed waterway which led to a water of the state.

76. The compost pile again had dead animals in various states of decay that were not fully covered, nor was there material between the carcasses.

77. On August 28, 2017, IDNR issued Kerns a NOV for the manure retention and composting violations observed on July 27, 2017.

78. On or around January 31, 2018, liquid manure was releasing from the southeast corner of the Confinement and flowing uncontrolled over the land to a manure storage structure.

79. Bricks had been laid down in attempt to control the manure flow but the manure was not controlled.

80. The dry bed of manure remained stockpiled to the north of the Confinement with no controls in place to contain the manure or runoff.

81. Manure from a prior release remained on the ground, including the pond of solids and effluent to the southeast of the Feedlot and the presence of manure and manure solids ponded on the ground to the southeast.

82. The compost pile had dead animals in various states of decay and were not fully covered, nor was there material between the carcasses.

83. On February 12, 2018, the IDNR issued Mr. Kerns a NOV for the manure retention and composting violations observed on January 31, 2018.

84. On or around May 31, 2019, Wendy Wittrock and Field Office 4 supervisor Jessica Montana conducted a follow-up investigation.

85. Liquid manure was releasing from the southeast corner of the Confinement and flowing uncontrolled over the land, with some of the manure reaching a manure storage structure.

86. Bricks were no longer along the path in an attempt to control the manure.

87. The dry bed manure remained stockpiled to the north of the Confinement with no place to contain the manure or runoff.

88. Manure had recently overflowed the retaining wall at the Feedlot and the manure had not been removed from the path of the overflow.

89. Ponding of manure solids and effluent remained to the southeast of the Feedlot, with manure and manure solids ponded on the ground to the southeast.

90. The compost pile had dead animals in various states of decay that were not fully covered, nor was there material between the carcasses.

91. A release of manure was taking place from the building at the southwest corner of the East Facility.

92. Kerns did not report the release to DNR within six hours of discovering the release.

93. On June 5, 2019, IDNR issued Kerns a NOV for the manure retention and composting violations observed.

VIOLATIONS

Administrative Consent Order Violations

94. Kerns failed to comply with Administrative Consent Orders 2017-AFO-14 and 2017-AFO-15 as agreed to in March 2017 by failing to complete construction of an unformed manure storage structure by October 1, 2017, and by failing to pay administrative penalties by December 1, 2019.

Animal Feeding Operation Violations

95. Kerns failed to retain manure generated at his confinement feeding operations between periods of manure application at the West Facility in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

96. Kerns failed to retain manure generated at his confinement feeding operation between periods of manure application at the East Facility in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

97. Kerns discharged manure directly into a water of the state from his confinement feeding operation at the West Facility in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

98. Kerns failed to dispose of manure from animal feeding operations at the West Facility in a manner that would not cause surface water or groundwater pollution in violation of Iowa Code section 459.311(3) and Iowa Admin Code. 65.2(7).

99. Kerns failed to dispose of manure from animal feeding operations at the East Facility in a manner that would not cause surface water or groundwater pollution in violation of

Iowa Code section 459.311(3).

100. Kerns failed to timely notify IDNR of releases of manure from his confinement feeding operations at the West and East Facilities in violation of 567 Iowa Admin. Code 65.2(9).

Water Quality Violations

101. Kerns discharged manure from a confinement feeding operation at the West Facility into a water of the state, violating Iowa Code sections 455B.186(1) and 567 Iowa Admin. Code 62.1.

102. Kerns allowed a discharge of hog manure at the West Facility from Kerns' confinement feeding operation to cause an exceedance of applicable water quality standards in violation of 567 Iowa Admin. Code 61.2(3).

103. Kerns allowed materials attributable to wastewater discharges or agricultural practices to produce objectionable color, odor or other aesthetically objectionable conditions in Iowa's surface waters that were acutely toxic to human, animal, or plant life in violation of 567 Iowa Admin. Code 61.3(2)(c) and 567 Iowa Admin. Code 61.3(2)(d).

Composting Violations

104. From July 27, 2017, through May 31, 2019, Kerns failed to properly maintain an adequate base layer and cover material around dead farm animal carcasses at the East Facility in violation of 567 Iowa Admin. Code 105.6(6).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests the Court:

- a. require compliance with Kerns' 2017 Administrative Orders requiring Defendant Steven Kerns to build an unformed manure structure at the

West Facility and pay the outstanding penalty of Eight Thousand Dollars (\$8,000.00) as agreed to in the prior orders.

- b. assess a civil penalty against Defendant Steven Kerns, pursuant to Iowa Code section 455B.191(2), 455B.191(5), 455D.25, and 459.603 for violations of Iowa Code sections 455B.186(1), 459.311(1) and 459.311(3); 567 Iowa Admin. Code 61.2(3), 61.3(2)(c), 61.3(2)(d), 62.1, 65.2(3), 65.2(7), 65.2(9); and the applicable manure management plan, not to exceed Five Thousand Dollars (\$5,000.00) per day, per violation, for each day of such violation;
- c. issue a permanent injunction enjoining Defendant Steven Kerns from any violation of Iowa Code sections 455B.186(1), 459.311(1) and 459.311(3); 567 Iowa Admin. Code 61.2(3), 62.1, 65.2(3), 65.2(7), 65.2(9), 105.6(6), and the applicable manure management plan.

Plaintiff further requests that the Court tax the costs of this action to the Defendant Steven Kerns and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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Attorney General of Iowa

/s/ Eric M. Dirth

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